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In the

Supreme Court of the United States

October Term, 1950

No. 595

ANDREAS PAPAGIANAKIS AND ZAFIRAS KYMOS,

Petitioners,

VERSUS

STEAMSHIP "SAMOS", HER BOATS, TACKLE, ENGINES, APPAREL, ETC., AND D. INGLESSIS FILS, S.A., AS OWNER, AND A. CASSIOTIS, HAROLD G. LAMOREAUX, DANIEL REGAN, AND ALBERT DEL GUERCIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is reported at 186 F. (2d) 257. No opinion was rendered in the District Court, but findings of fact and conclusions of law were entered and these may be found at

page 1 of the appendix to this brief. The companion habeas corpus proceeding in the Court of Appeals, *Regan* v. *Papagianakis,* is reported at 180 F. (2d) 888; no opinion was rendered in the District Court.

JURISDICTION

Jurisdiction of this court is invoked under Title 28 U.S.C., Section 1254.

QUESTION PRESENTED

The sole question involved here is whether a shipowner, who detains alien seamen on board his vessel in accordance with a detention order issued by an Immigration official and valid on its face, is liable in damages to the seamen detained when the order is set aside on grounds that it was not based on "sufficient evidence".

STATEMENT OF THE CASE

Since petitioners have failed to file copies of the printed record in compliance with the requirements of Supreme Court Rules 38 (3), the respondents herein have printed as part of their appendix those portions of the record considered material. References are therefore made to the appendix of this brief instead of to the record.

The instant brief is concerned only with those questions affecting the respondents' Steamship "SAMOS", her owners, D. Inglessis Fils, S.A. and A. Cassiotis, her Chief Mate. Respondents Harold G. Lamoreaux, Daniel Regan and Albert Del Guercio, all Immigration officials, are represented by the government and a separate brief is being filed on their behalf by the Solicitor General.

Petitioners' statement of the facts of this case is as inadequate as it is misleading and argumentative. The facts

as they were found to exist by the two courts below are as follows:

The Greek S. S. "SAMOS" arrived at the port of Hampton Roads on June 29th, 1949, where she was boarded by Harold Lamoreaux, Immigrant Inspector, who conducted the usual immigration examination that is given all foreign ships. The Master, Nicholas Inglessis, and the Chief Mate, A. Cassiotis, acted as interpreters (App. 2). Upon the completion of this examination, the Master was served with a detention order (Department of Justice Form 1-259) directing him to detain on board the two petitioners as "mala fide" seamen, under the penalty of a fine of $1,000.00 each in the event of an escape. 8 U.S.C. 167. This order was signed by Lamoreaux "By direction of the Immigration and Naturalization Officer in Charge" for the Port of Norfolk. Watchmen from the Tidewater Port Service were employed to watch these detainees. During working hours they were allowed the run of the ship, but at night they were locked in a stateroom to prevent their escape (App. 2). On July 2, 1949, petitioners, acting through their attorneys, filed a petition for writ of habeas corpus against the vessel, its Master, owners, and the Immigration Officials responsible for their detention. Simultaneously with the filing of the habeas corpus action, they filed a libel against the same respondents, seeking damages for false imprisonment, based on an alleged contrivance of the the Master and the Immigrant Inspector to detain petitioners. As the result of the habeas corpus proceedings, the detention order was found not to have been based on sufficient evidence and petitioners were released from custody.

On May 11, 1950, a hearing was had on the libel for false imprisonment, following which the court found that the respondents had not instigated the detention of petitioners pursuant to any contrivance or conspiracy; that the respondents had acted in good faith without malice or improper

motive; that there was no false imprisonment of petitioners; and that respondents acted pursuant to an order of the Immigration authorities valid on its face (App. 1). By mutual agreement the case was submitted to the court on the testimony taken at the habeas corpus proceeding.

SUMMARY OF ARGUMENT

The purpose of this brief is to show unto the Court that the respondent Master had no choice other than to detain petitioners. If he had refused to obey the detention order, which was in all respects valid on its face, he would have immediately rendered himself liable to fines totalling $2,000.00. It is true that the court later determined that the order was invalid because not based on "sufficient evidence", but it was nevertheless binding on the Master until set aside. Certainly he was under no duty to question its validity at the risk of incurring a fine.

Petitioners allege that the Master contrived to have petitioners detained on board by instigating the Immigrant Inspector to issue the detention order, but no such contrivance or conspiracy was found by the two courts below.

Although petitioners assert that a conflict exists between the decision of the court below and decisions in other circuits, an examination of these decisions will show that no such conflict exists. In fact, the court below has really decided no question of law at all but has merely applied existing and undisputed principles of law to the facts of this particular case.

In the argument which follows, respondents have omitted answering those arguments set forth by petitioners in their supporting brief which respondents consider too trivial to bring to this court's attention. It should also be pointed out that the supporting brief filed by petitioners is the same one submitted by them in the Court of Appeals.

ARGUMENT

A. The Findings of Fact of the District Judge, Which Were Fully Concurred in by the Court of Appeals, Should Not Be Disturbed by This Court.

The District Court found the facts as have been set forth in this brief and as they are set forth in its findings of fact and conclusions of law (App. 1), and the Court of Appeals, without deviation, concurred in these findings. It has been held by this court, time and time again, that it will not in admiralty, any more than in other cases, review the concurrent findings of two courts below. *Mahnich* v. *Southern S. S. Co.*, 321 U.S. 96, 98. There is a presumption in favor of the correctness of such findings and the burden is on the appellants to show the error. *The Quickstep*, Fed. Cas. No. 11,509; *The S. B. Wheeler*, 20 Wall. 385.

Petitioners argue that since neither the Master nor the Chief Mate testified in the trial court, the inference is to be drawn that their testimony would have been unfavorable. Petitioners apparently overlook the fact that they submitted their case on the testimony given in the habeas corpus proceeding, and that no testimony was offered at this proceeding which warranted the expense of taking the deposition of these two individuals. Furthermore, petitioners are in no position to argue that this court should grant a writ because they were unable to avail themselves of the testimony of one of the respondents. Petitioners assert that the respondent, Cassiotis, left the jurisdiction after having been served with process and that they were given no opportunity to examine him. As a matter of fact, however, Cassiotis was present in Hampton Roads for several days after the libel was filed, and had they desired to take his testimony, respondents would have been only too willing to cooperate.

In quoting the so called "positive" testimony of petitioner, Papagianakis, that to his knowledge, the Captain created "all this trouble", petitioners entirely neglected to show the source of this "knowledge" which was brought out on cross-examination (App. 4).

> "I *thought* that the Captain was creating all the trouble, because I saw that six of the men were paid off but I was not." (Italics ours)

Where two courts have found against appellants, every presumption is in favor of the decrees below, and a clear case must be made in favor of the appellants to justify a reversal. *The Richmond,* 103 U. S. 540. Clearly, appellants have not met the burden of showing that the findings of the District Court were in error.

B. There is no Liability on the Part of Respondents for Obeying the Detention Order of the Immigration Authorities, Valid on Its Face.

Respondents had no choice but to obey the order of the immigration officials. They could not set themselves up as judges to determine if the evidence substantiated the detention order, and even if they had felt there was not sufficient evidence, they could have disobeyed the order only under pain of incurring a fine.

Contrary to petitioners' assertions, the courts below made no comment whatsoever as to respondents' carrying the burden of justifying or not justifying their actions. As to the cases cited on this point by petitioners (*Bryan* v. *Congdon,* 86 Fed. 221 (CCA8); *Weigil* v. *Brown,* 194 Fed. 652 (CCA8)), an examination of both will readily reveal their complete irrelevance. In *Bryan* v. *Congdon,* the plaintiff had been imprisoned upon an affidavit and subsequent warrant

of arrest. The court found the essential facts of jurisdiction wholly wanting in the affidavit because of complainants' failure to comply with the State statute and therefore affording no protection to the complainant-defendant instigating the proceeding. In the instant case, the very face of the detention order showed that Lamoreaux had jurisdiction to issue same. In the other case cited, *Weigil* v. *Brown, supra*, where plaintiff had been imprisoned for a period of time beyond that specified by statute for the particular offense of which he had been found guilty, and the defendant offered in justification the commitment order of the sentencing court which showed on its face that its command exceeded its jurisdiction, the court held that neither the unauthorized command of a judge or justice, nor the process of a court of limited jurisdiction which shows on its face that its command is without his or its jurisdiction, and void, furnishes any protection to officers or others who obey it or act under it. In the instant case, there is no doubt but that the detention order issued by Inspector Lamoreaux was valid on its face and binding on all those ordered to act under it until set aside.

The case of *Colovis* v. *Watkins* (CCA2) 170 F. (2d) 998 is miscited by petitioners to the effect that respondents should justify their actions. The facts of the cited case and the consequential holdings of law placed no such duty upon the shipowner involved. The case is irrelevant here. In the instant case the burden is on the petitioners, as in any other case.

(1) *There Was an Absolute Duty on Respondents, S.S. "SAMOS", D. Inglessis Fils, S.A. and A. Cassiotis to Detain Petitioners.*

Regardless of what the above named respondents believed as to whether or not petitioners were bona fide seamen, under the provisions of 8 U.S.C. 167, there was still an absolute

duty on them to detain petitioners in accordance with the order of the immigration authorities, *Lloyd Royal Belge Societe Anonyme* v. *Elting,* 61 F. (2d) 745 (CCA2). Respondents were not required to pass judgment as to whether or not the order was backed by "substantial evidence". Petitioners argue that since appellees had access to the seamen's books of petitioners and the crew manifest, they should have known that petitioners were bona fide seamen and should therefore have disregarded the detention order. If such an argument were to be accepted, every master of a vessel having aliens aboard and every chief mate thereof, since Cassiotis was the Chief Mate, should disregard detention orders of U. S. Immigration officials whenever he believes the seamen are bona fide and should not be detained. By the very terms of the statute, such a course would immediately subject them to fines of $1,000.00 for each seaman whom they failed to detain, *Santos Maru,* 84 F. (2d) 482 (CCA5).

(2) *The Detention Order Was Not Issued as a Result of Representations Made by the Master of the Respondent S.S. "SAMOS" and its Chief Mate.*

Petitioners' contention that the detention order was issued as a result of the representations made by the above named respondents is utterly without foundation. Certainly no significance can be attached to the fact that the crew manifest examined by Lamoreaux, was prepared by the Master, as such manifests are always prepared by the Master. Nor has it been shown that Cassiotis, the Chief Mate, did not interpret properly. In fact, the contrary is indicated. There being no conflict whatsoever between the information which the petitioners say they gave to the interpreter and the information that Lamoreaux says he obtained from the interpreter, the interpretation must have been correct. For instance, petitioner Papagianakis testified, under cross-examination,

of his intention to leave the SAMOS and seek a new ship upon arrival in the United States, but that he had no other ship in mind. Lamoreaux testified that he obtained this identical information from petitioners in his inspection (App. 3). Nor is there any denial of petitioners' having admitted to Lamoreaux, through Cassiotis as interpreter, that they desired to get another vessel (Petitioners' Petition for Writ, page 3), without being able to prove to the Immigration officials their ability to reship in conformance with 8 U.S.C. 168. Also, as Lamoreaux positively testified, there was no conspiracy with the Master to detain petitioners (App. 4). It can readily be seen that petitioners' allegations cannot be substantiated in fact.

(3) *The Respondents Acted Pursuant to an Order of the Immigration Officials Which Was Valid on its Face.*

The detention order issued by Lamoreaux, at the direction of the Immigration and Naturalization Officer in Charge, was valid in every respect and was binding on the Master until set aside, *The Western World,* 1934 A.M.C. 924, (Sup. Ct. N. Y. County). While petitioners argue that this order was void on its face, still the District Court and the Court of Appeals concurred in the finding that it was valid on its face. Respondents had the right to presume that the provisions of the law had been observed, *"Italia" Societa Anonima Di Navigazione* v. *Durning,* 115 F. (2d) 711, (CCA2); *Ngim Ah Oy* v. *Kaff,* 112 F. (2d) 607 (CCA9).

At most, the detention order was "voidable" and not "void". In the habeas corpus proceeding, the Court of Appeals held that the order was "not supported by substantiated evidence". Since there was no question that it was issued by one who had the authority to issue it, it could therefore only be "voidable". The test to be applied in the

determination of whether process is voidable or absolutely void, is set out in Amer. Jur., Vol. 22, Section 67, page 400:

> "To serve as a protection for its execution, process must be fair on its face. But the law distinguishes between void and voidable process, and an officer does not become liable for his acts in due execution of process because it is irregular and voidable for such irregularity. The general rule is that an officer, to justify an arrest or other detention, must show that the acts were done in the lawful execution of process issued from a court or magistrate having jurisdiction, or at least having apparent jurisdiction, to issue it and that no irregularity or illegality was apparent on the face of the process. Stated in another way, process may be said to be fair on its face where it proceeds from a court, magistrate, or body having authority of law to issue process of that nature, is legal in form, and contains on its face nothing to notify or fairly apprise the officer that it is issued without authority. In such circumstances, the officer is protected and he is not concerned with any illegalities which exist back of the process."

It can be seen that unquestionably, process which is valid on its face, as was the detention order in the instant case, protects those by whom it is executed.

(a) *It was perfectly proper for the detention order to be issued by one of the subordinate Immigration officers and not by the "Immigration Officer in Charge at the Port of Arrival".*

The order in question (Respondents' Exhibit 1) was issued by Harold G. Lamoreaux, a U. S. Immigrant Inspector, "By direction of the Immigration and Naturalization Officer in Charge". It has long been established that such a delegation of authority is fully warranted under the statute

and that the volume of business of this type in a busy port requires such delegation, *Lloyd Royal Belge Societe Anonyme* v. *Elting, supra; City of Harvard*, 52 F. (2d) 461, SD NY).

(b) *It was unnecessary that the detention order be based upon an inspection "by at least two Immigrant Inspectors".*

Petitioners cite as their authority for this allegation, 8 U.S.C. 152. However, there is nothing in this statute requiring that a detention order be signed by two inspectors, *Ngim Ah Oy* v. *Haff, supra.*

(c) *The issuance of detention orders is not within the purview of the Administrative Procedure Act, 5 U. S. C. 1001, et seq.*

The Court of Appeals stated in its opinion in the instant case, in answer to the allegation that the detention order was void because of the provisions of the Administrative Procedure Act:

> ". . . Whatever might be required as to an order of deportation, certainly the officers of the vessel would not have been justified in ignoring that part of the order which required that they keep the petitioners on board."

An examination of the cases cited by petitioner, *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, bears out the lower court's position since it is shown that the Act deals only with administrative hearings concerned with *deportation*. Furthermore, *Wong Yang Sung* v. *McGrath, supra*, was not decided by the Supreme Court until long after the detention in the instant case. Therefore, even if the Act did apply, there

was nothing on the face of the order to put the Master on notice that the Act had not been complied with.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari, as to respondents, S.S. "SAMOS", D. Inglessis and A. Cassiotis, should be denied.

Respectfully submitted,

HUGH S. MEREDITH
BRADEN VANDEVENTER, JR.
Counsel for Respondents, Named Above

Norfolk, Virginia
April 13, 1951.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the hearing of the evidence on the 7th cause of action on the intervening libel of Andreas Papagianakis and Zafarias Kymos, the Court hereby finds the facts specially as follows:

Findings of Fact

1. That neither the master nor any of the respondents endeavored to keep the intervenors on board by instigation of the Immigration officers to do so, and they did not incarcerate the intervening libelants pursuant to any contrivance or conspiracy.

2. That the respondents and the master acted in good faith and without malice or improper motive.

3. That there was no false imprisonment of the intervenors.

4. That the respondents acted pursuant to an order of the immigration authorities valid on its face.

Conclusions of Law

Upon the foregoing findings of fact the Court states separately its conclusions as follows:

(a) That the respondents did not violate any obligation owing to the intervenors.

(b) That the respondents were not guilty of any violations of law in their conduct.

(c) That the respondents are not liable to the intervenors in any amount whatsoever.

(d) That the respondents are entitled to recover their costs of the intervenors.

(SGD.) ALBERT V. BRYAN
United States District Judge

Alexandria, Virginia.
May 23, 1950.

Andreas Papagianakis

DIRECT

*[R. 32]

BY MR. MOREWITZ:

Q Who was Casseodas? Was he the chief mate?

A Yes, sir, he is the chief mate.

Q What did he have to do with the interpretation with the Immigration officers?

A I have myself all mixed up. I mean the chief mate, he was the interpreter, and the captain.

* * *

[R. 34]

Q Now, after you were locked up and kept in the room, how long were you locked up in this room that you are talking about, with the other man that is here in the court room with you?

A During working hours I was permitted to work, and after that I was supposed to be locked up in the room.

* * *

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*References are to the habeas corpus record which forms a part of the record in the instant case.

H. G. Lamoreaux

DIRECT

[R. 83, 84]

By Mr. Harper:

Q It was by this medium that you found, in addition to the information on the manifest, that they had signed on just prior to the ship's movement from France to this country and that it was their desire to be paid off?

A They stated that they wanted to be paid off here.

Q And to leave the ship at Norfolk?

A That is correct.

Q Were you advised whether or not there was another ship available for them?

A They had none available. They had no information on any other ship, and were questioned on that matter.

* * *

Q Did you ask the petitioners whether or not they had another ship in mind?

A Yes, I did.

* * *

Q What answer were you given?

A The answer was "No".

* * *

[R. 88]

By Mr. Meredith:

Q When you went on board the SAMOS to conduct your inspection, Mr. Lamoreaux, were you told by the master of the SAMOS to order these two particular men detained?

A No, sir.

Q Did he say that he wanted them detained?

A No, sir.

* * *

[R. 89]

Q It is alleged in the civil suit that has been filed against you that you collaborated with the master in the detention of these men, or that there was a conspiracy between you and the master to detain them. I ask you whether that is true?

A No, sir.

Andreas Papagianakis

RECALLED - CROSS

[R. 109, 110]

BY MR. MEREDITH:

Q You say the watchman pushed you over in a room and took a club to hit you. Did he hit you with the club?

A He aimed to hit me, but didn't hit me because the captain got between us.

Q The captain got between you? The captain protected you; is that correct?

A This is the first time I had something happen to me in my life in that particular misabusement.

Q And you brought this all up, accusing the captain of having caused this whole thing; is that correct?

A I thought that the captain was creating all this trouble, because I saw that six of the men were paid off but I was not, . . .

* * *

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 595

ANDREAS PAPAGIANAKIS AND ZAFIRAS KYMOS,
Petitioners

v.

STEAMSHIP "SAMOS", HER BOATS, TACKLE, ENGINES, APPAREL, ETC., AND D. INGLESSIS FILS, S. A., as Owner, and A. CASSIOTIS, HAROLD G. LAMOREAUX, DANIEL REGAN, and ALBERT DEL GUERCIO.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION FOR RESPONDENTS LAMOREAUX, REGAN, AND DEL GUERCIO

OPINIONS BELOW

The memorandum opinion of the District Court for the Eastern District of Virginia (R. 4) is not

reported. The opinion of the Court of Appeals for the Fourth Circuit is reported at 186 F. 2d 257.[1]

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on December 20, 1950. The petition for a writ of certiorari was filed on March 8, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

This is an admiralty proceeding against three immigration officials, as well as against a vessel, her master and owners, for damages for false imprisonment and deprivation of civil rights. This brief in opposition is filed in behalf of respondents Harold Lamoreaux, Immigration Inspector, Daniel Regan, Officer-in-Charge, and Albert Del Guercio, District Director, Immigration and Naturalization Service. A separate brief in opposition is being filed in behalf of the vessel, her master and owners. For the purposes of this opposition, the questions presented are:

(1) Whether officers of the United States Immigration and Naturalization Service may be held personally liable in damages for the consequences

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[1] The record in this case has not been printed, pursuant to petitioners' motion to dispense with the printing of the record. Since the opinion of the court below has not been paginated, no record reference thereto can be made.

of official acts performed by them in administering statutes and regulations pertaining to immigration affairs.

(2) Whether the libel alleges a cause of action for violation of the Civil Rights Acts of the United States.

STATUTES AND REGULATION INVOLVED

1. The pertinent provisions of 8 U. S. C. 167 (a) and 8 U. S. C. 168 are set out in the Appendix, *infra*, pp. 14-15.

2. Section 120.21 (e) of 8 Code of Federal Regulations (1949 ed.) is set forth in the Appendix, *infra*, p. 15.

3. The provisions of the Civil Rights Acts, as they appear in R. S. 1979 and 1980 (3) (8 U. S. C. 43 and 47 (3)), are set forth in pertinent part in the Appendix, *infra*, pp. 16-17.

STATEMENT

Petitioners are alien seamen who arrived in the port of Norfolk, Virginia, in June, 1949, as members of the crew of the Greek ship "Samos". Respondent Lamoreaux, the Immigration Inspector at Norfolk, made the usual immigration examination, and issued an order to the master of the vessel to detain the petitioners aboard ship since he was not satisfied that they were bona fide seamen (R.

15).[2] Petitioners were detained on the vessel pursuant to such order. Shortly thereafter, they filed a petition for habeas corpus in the District Court for the Eastern District of Virginia. The district judge ordered their release on the ground that the order detaining petitioners was without evidence to support it (R. 15-16), and this action was affirmed in a *per curiam* decision by the court below. *Regan* v. *Papagianakis et al.*, 180 F. 2d 888.

At about the time that they filed their petition for habeas corpus, petitioners commenced this suit. By an "intervening libel" (R. 2-3) filed in a proceeding already pending against the vessel in the District Court for the Eastern District of Virginia, petitioners sought to "implead" respondents Lamoreaux, Regan, and Del Guercio, and recover damages for false imprisonment and deprivation of "civil rights" against them as well as against

---

[2] It is provided by statute (8 U. S. C. 167 (a), Appendix, *infra*, p. 14) that a vessel arriving at a port of the United States shall detain alien seamen aboard ship until they shall have been inspected by an immigration officer at the port, and that, after the inspection, the vessel shall detain or deport the alien seamen if required by the immigration officer to do so. Section 168 of 8 U. S. C. (Appendix, *infra*, pp. 14-15) provides that an alien seaman may land and enter port for the purpose of reshipping on board a vessel bound for a foreign port, in accordance with such regulations as the Attorney General may prescribe. One of these regulations (§ 120.21(e) of 8 C. F. R., Appendix, *infra*, p. 15) directs that, where the immigration officer is not satisfied that an alien applying for temporary admission is a bona fide alien seaman, the officer shall order that the alien be detained aboard the vessel and be deported.

the vessel, her master and owner. The respondent immigration officials made a special appearance and duly excepted to the sufficiency of the intervening libel, charging that the libel failed to state a cause of action against them since it was "an effort to recover money damages from employees of the United States based upon their acts in executing certain statutes and regulations, and exercising and performing a discretionary function and duty within the scope of their employment" (R. 3).

The district court sustained their exceptions and dismissed them from the libel on the ground that "their actions were in performance of their duties as immigration officials, for which they are not suable or liable" (R. 4). On appeal, the court below affirmed, holding (1) that officers in the executive department of the government may not be held liable in a suit for damages because of acts done in the discharge of official duty involving the exercise of discretion of a quasi-judicial character and (2) that the libel did not allege a cause of action under the Civil Rights Acts. *Papagianakis et al.* v. *The S. S. Samos, etc.*, 186 F. 2d 257.

ARGUMENT

The gist of petitioners' complaint is that they were imprisoned by respondent immigration officials as mala fide seamen, that the courts later ordered their release on the ground that the detention order was without evidence to support it, and that respondents are therefore personally liable to them

in damages for false imprisonment. Petitioners also contend that their intervening libel is sufficient to state a claim against respondents for damages under the Civil Rights Acts. Both of these contentions were rejected by the Court of Appeals. The ruling below, we submit, is plainly correct, is supported by previous holdings of this Court, involves no conflict of decisions among the lower courts, and does not warrant further review by this Court.

1. It is well settled that an executive official of the Government, regardless of his motives, is not personally liable for an act which is within the general scope of his official authority. *Spalding* v. *Vilas,* 161 U. S. 483, 498; *Gibson* v. *Reynolds,* 172 F. 2d 95 (C. A. 8), certiorari denied, 337 U. S. 925; *Yaselli* v. *Goff,* 12 F. 2d 396 (C. A. 2), affirmed, 275 U. S. 503; *Dodez* v. *Weygandt,* 173 F. 2d 965 (C. A. 6); *Standard Nut Margarine Co.* v. *Mellon,* 72 F. 2d 557 (C. A. D. C.), certiorari denied, 293 U. S. 605. Strong considerations of public policy justify this immunity rule. Apprehension that his official conduct may subject him to a civil action for damages infringes on the "perfect freedom which ought to exist in discharge of public duty * * *, and often to the detriment of the public service." *De Arnaud* v. *Ainsworth,* 24 App. D. C. 167, 178; *Cooper* v. *O'Connor,* 99 F. 2d 135, 141-142 (C. A. D. C.), certiorari denied, 305 U. S. 643. As was definitively stated by Chief Judge Hand for

the Court of Appeals for the Second Circuit in *Gregoire* v. *Biddle,* 177 F. 2d 579, 581, certiorari denied, 339 U. S. 949:

> It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the an-

swer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. Judged as res nova, we should not hesitate to follow the path laid down in the books.

The decisions have, indeed, always imposed as a limitation upon the immunity that the official's act must have been within the scope of his powers; and it can be argued that official powers, since they exist only for the public good, never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. A moment's reflection shows, however, that that cannot be the meaning of the limitation without defeating the whole doctrine. What is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act, if he had been using his power for any of the purposes on whose account it was vested in him.

Petitioners do not contend that the acts of respondents were not within the general scope of their official authority. They could hardly do so, in view of their stipulation at a pre-trial conference that "in all transactions and at all times com-

plained of in the intervening libel now pending herein, respondents, Albert Del Guercio, Daniel Regan, and Harold G. Lamoreaux, were officials of the United States Immigration and Naturalization Service and acting as such * * *" (R. 3-4). See also ftn. 2, *supra,* p. 4.

Petitioners' argument is that, in dismissing respondent Lamoreaux, the courts below went too far, extending the doctrine of immunity of federal officials from damage suits "down to the very lowest echelon" (Pet. 7), down "to include mere Immigrant Inspectors" (Pet. 6). In their libel, however, petitioners state that the actions of Lamoreaux, the Immigration Inspector, were "under the directions of the aforesaid Daniel Regan and the aforesaid Albert Del Guercio * * *" (R. 2). Thus, according to the libel itself, the acts of Lamoreaux were really the acts of respondents Regan and Del Guercio and the instant case is on all fours with the decision of the Second Circuit in *Gregoire* v. *Biddle, supra,* where a District Director of Immigration was held to be immune from suit for damages for false imprisonment. Moreover, as stated by the Court of Appeals for the District of Columbia in *Cooper* v. *O'Connor,* 99 F. 2d 135, 142, certiorari denied, 305 U. S. 643: "When the act done occurs in the course of official duty of the [subordinate] duly appointed and required to act, it is the official action of the department; and the same reason for immunity applies as if it had

been performed by the superior officer himself." See also *United States, to Use of Parravicino* v. *Brunswick,* 69 F. 2d 383, 386 (C. A. D. C.). Accordingly, the immunity rule has been held to apply to a police officer (*Laughlin* v. *Garnett,* 138 F. 2d 931 (C. A. D. C.), certiorari denied, 322 U. S. 738), a deputy fire marshal (*Phelps* v. *Dawson,* 97 F. 2d 339 (C. A. 8)), and to an agent of the Federal Bureau of Investigation (*Cooper* v. *O'Connor, supra*). These officers occupy positions on no higher echelon in the ranks of official hierarchy than respondent Lamoreaux, who, in the words of the court below, was clearly engaged "in a discretionary, quasi judicial function in the issuance of the detention order." 186 F. 2d at 262.[3]

We think it plain, therefore, that the courts below were correct, both in principle and from the point of view of decided authority, in dismissing

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[3] *Colpoys* v. *Gates,* 118 F. 2d 16 (C. A. D. C.), the case principally relied on by petitioners in this aspect of their argument (Pet. 5, 7), is not in point. There a United States marshal was held liable for damages in an action for libel and slander, not because he was a minor federal official, but because the statements made by him which formed the basis of the suit were not made in line of duty.

Petitioners cite a great myriad of other cases (Pet. 4-7) to support their contention that the immunity rule should not be extended to respondent Lamoreaux. They are either not in point or are distinguishable. For instance, in *Bell* v. *Hood,* 327 U. S. 678, cited on page 5 of the seamen's petition, the only matter decided was that the District Court had jurisdiction of the cause of action on the ground that a federal question was raised in the complaint.

respondent Lamoreaux from the intervening libel, as well as respondents Regan and Del Guercio.[4]

2. Petitioners' second contention (Pet. 8-9, Pet. Br. 29-35) is that the intervening libel states a cause of action against respondents under Civil Rights Statutes R. S. 1979 and 1980 (3) (8 U. S. C. 43 and 47 (3)). This contention is supported by only a most charitable reading of the libel, "violation of their civil rights" being charged (R. 3), and nothing more. Moreover, this same argument was advanced to the Court of Appeals in *Gregoire* v. *Biddle, supra,* and was flatly rejected. 177 F. 2d at 581-582, certiorari denied, 339 U. S. 949. See also *Gibson* v. *Reynolds,* 172 F. 2d 95, 97 (C. A. 8), certiorari denied, 337 U. S. 925.

The terms of R. S. 1979 make plain its inapplicability here. Respondents' conduct in the instant case in no way involved action "under color of any statute, ordinance, regulation, custom, or usage, *of any State or Territory*" as contemplated by R. S. 1979, 8 U. S. C. 43 (Appendix, *infra,* p. 16) (italics supplied). While a federal official who deprives a person of his federal rights may be criminally liable under 18 U. S. C. 242 (formerly 18 U. S. C. 52, Section 20 of the Criminal Code),

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[4] As pointed out by the Court of Appeals, the libel contains "no allegation that they [respondents] were actuated by malice or any improper motive in issuing the order", and petitioners' claim would also fail even if respondents were held to be liable for actions undertaken through improper motives. 186 F. 2d, at 262.

which is not limited to action under state laws or regulations, he may not, because of the presence of that limitation in R. S. 1979, be held civilly liable under R. S. 1979. See *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 251, note 12 (C. A. 3). In this connection, it is important to note that the language in *Screws* v. *United States*, 325 U. S. 91, relied on by petitioners (Pet. 9), indicates at most only that federal officials may be liable under the criminal provisions of the Civil Rights Acts; it does not bear at all on the question of their civil liability.

Similarly, R. S. 1980 (3), 8 U. S. C. 47 (3) (Appendix, *infra*, pp. 16-17) does not support petitioners. That statute authorizes civil actions for conspiracies to deprive persons of certain rights secured to them by the Constitution. However, it does not afford redress for such wrongs as "assault and battery [or] false imprisonment," which involve the individual invasion of private rights. *Love* v. *Chandler*, 124 F. 2d 785, 787 (C. A. 8); see *Hodges* v. *United States*, 203 U. S. 1; *Civil Rights Cases*, 109 U. S. 3. Since the instant action is grounded on an allegedly false imprisonment, arising out of an administrative detention based on respondents' reasonable interpretation of immigration statutes, regulations and procedures, it cannot be made actionable under R. S. 1980 merely because that interpretation was later held erroneous.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1951.

APPENDIX.

1. The pertinent provisions of 8 U. S. C. 167 (a) and 168 provide:

§ 167. *Control of alien seamen—(a) Detention of seamen on board vessel until after inspection; detention or deportation; penalty; clearance to vessels.*

> The owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration officer or the Attorney General to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien seaman in respect of whom such failure occurs. * * *

§168. *Paying off or discharging excluded aliens employed on vessels; landing to allow reshipping.*

> It shall be unlawful to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port

or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens. In case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Attorney General may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this chapter to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival.

2. Section 120.21 (e) of 8 Code of Federal Regulations (1949 ed.) provides:

* * * * *

Where the immigration officer is not satisfied that an alien applying for temporary admission as a bona fide alien seaman is entitled thereto, the immigration officer shall order the owner, charterer, agent, consignee, or master of the vessel on which such seaman arrived to detain him on board and deport him in the manner provided by law.

3. The pertinent provisions of R. S. 1979 and 1980 (3) (8 U. S. C. 43, 47(3)) read as follows:[1]

§ 43. *Civil action for deprivation of rights.*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R. S. § 1979.)

§ 47. *Conspiracy to interfere with civil rights—*

* * * * *

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the consti-

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[1] The section numbers used are those which appear in Title 8 of the United States Code.

tuted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. § 1980.)

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